IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6399 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI NATHUBHAI JESUNGBHAI & 1 - Petitioner(s)

Versus

THE STATE OF GUJARAT NOTICE SERVED THROUGH & 5 - Respondent(s)

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Appearance :

MR DK ACHARYA for Petitioner(s) : 1 - 2, 2.2.1,2.2.2

MR M R MENGDE AGP for Respondent(s) : 1,

RULE SERVED for Respondent(s) : 2 - 3, 6.2.1, 6.2.2, 6.2.3,6.2.4

DELETED for Respondent(s) : 4 - 5,5.2.1

None for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/10/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgement and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.429 of 1985 dtd.3/7/1986 in dismissing the same and confirming the order passed by the Collector, Banaskantha dtd.8/4/1985, by which the Collector, Banaskantha dismissed the Land Appeal No.7 of 1985 confirming the order passed by the Deputy Collector, Palanpur dtd.29/9/1984 in RTS/Breach of Condition Case No.26 of 1984.

2.The petitioners purchased the land admeasuring 4 Acres and 8 Gunthas of Survey No.48 Paiki of Village Dhanali, Taluka Vadgam by registered

sale deed td.11/8/1980 from the original land owners namely Nathubhai Jesungbhai and Laljibhai Jesungbhai (hereinafter referred to as “the land in question” for convenience) and the name of the petitioners were mutated in the revenue record. However, as it was found that the land in question which came to be purchased by the petitioners was new tenure land, the entry was continued as disputed entry and it the Dy.Collector, Palanpur initiated proceedings for breach of condition and a show cause notice was issued in 1984 directing the petitioners and the original land owners to show as to why the land in question should not be forfeited to the Government. The Dy.Collector, Palanpur, vide order dt.29/9/1984 held that the transaction in favour of the petitioners and the original land owners is illegal and invalid and further passed order forfeiting the land in question to the Government. Being aggrieved and dissatisfied

with the order passed by the Dy.Collector, Palanpur dtd.29/9/1984 in RTS/Breach of Condition Case No.26 of 1984, the petitioners preferred an appeal before the Collector, Banaskantha being Land Appeal No.7 of 1985 and the Collector, Banaskantha vide his order dtd.8/4/1985 dismissed the said appeal confirming the order passed by the Dy.Collector, Palanpur. Being aggrieved and dissatisfied with the order passed by the Collector, Banaskantha dtd.8/4/1985 in Land Appeal No.7 of 1985, the petitioners preferred a Revision Application before the Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.-SRD-429 of 1985 and the Secretary (Appeals), Revenue Department, State of Gujarat vide his judgement and order dtd.3/1/1986 dismissed the said revision application, confirming the order passed by both the authorities below. Being aggrieved by and dissatisfied with the

judgement and order passed by the Secretary (Appeals), Revenue Department, State of Gujaratdtd.3/1/1986 in Revision Application No.429 of 1985, the petitioners have preferred the present petition under Articles 226 and 227 of the Constitution of India.

3.Mr.D.K. Acharya, learned advocate appearing on behalf of the petitioners has submitted that all the authorities below have materially erred in not considering the application of the petitioners for regularization of the breach of the condition stipulated by designating the land as new tenure land. He has also relied upon the judgement of this Court in the case of Jivabhai Mulabhai Patel Vs. Deputy Collector and ors., reported in 1998 (1) GCD in support of his submission that new tenure (Pasayata Service Tenure) Land transferred without requisite permission of Collector can be regularized in terms of sec.73(B) of the Bombay Land Revenue Code. He has also submitted that

the petitioners are ready and willing to move an appropriate application for regularisation and/or ex-post facto permission and they are ready and willing to pay necessary charges, penalty, fine and premium payable for regularisation and/or for grant of ex-post facto permission and has submitted that the petitioners will be making such application within a period of two weeks.

4. Mr.M.R. Mengde, learned AGP is not in a position to dispute the proposition of law laid down by this Court in the judgement cited by the learned advocate appearing on behalf of the petitioners. However, he has submitted that if appropriate application is made by the petitioners, the same can be dealt with in accordance with law and on merits. He has, therefore, requested to pass appropriate order.

5. Considering the fact that the petitioner is in possession of the land in question since 1980 and the petitioners have purchased the land in

question by registered sale deed and as held by this Court in the case of Jivabhai Mulabhai Patel (Supra), new tenure (Pasayata Service Tenure) land transferred without requisite permission of the Collector can be regularised in terms of Sec.73(B) of the Bombay Land Revenue Code instead of forfeiting the land in question to the Government, it is the contention of the petitioners that in the meantime, the petitioners have also developed the land in question and have invested huge amount for improvement of the land in question. In that view of the matter and even in other case, the transaction is regularised for breach of condition by designating the land as a new tenure land, if an application submitted by the petitioners for regularisation of the transaction / land in question for ex-post facto permission to the Collector, Bansaksnatha within a period of two weeks from the date of receipt of this order, the Collector,

Banaskantha shall consider the same in accordance with law and on merits and to grant permission ex-post facto on conditions that may be deem just and proper, in accordance with law and considering the Government Circulars and Resolutions.

6. In view of the statement made at bar by the learned advocate for the petitioners that the petitioners are ready and willing to pay fine, penalty, premium etc. if any, and/or any other charges and/or amount which is required to be paid, the Collector, Banaskantha is hereby directed to pass appropriate order in accordance with law and on merits, without in any way being influenced by the orders which are passed by the authorities below and impugned in the present petition and it is observed and ordered that on passing appropriate order by the Collector, Banaskantha, the orders which are impugned in the present petition are not required to be

given any effect and the same will not survive. The Collector, Banaskantha shall pass appropriate order within a period of three months from the date of receipt of representation from the petitioners as aforesaid.

7.With the above observations and directions, the present petition stands disposed of. D.S. Permitted.

(M.R. SHAH,J.)

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